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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,219	03/29/2001	George R. Borden IV	KLR 7146.091	6071
47915	7590	01/30/2006	EXAMINER	
CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP			VU, THANH T	
1600 ODS TOWER			ART UNIT	PAPER NUMBER
601 SW SECOND AVENUE				
PORTLAND, OR 97204			2174	

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/823,219	BORDEN, GEORGE R.	
	Examiner	Art Unit	
	Thanh T. Vu	2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 31 October 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 6-8 and 16 is/are pending in the application.  
 4a) Of the above claim(s) 16 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 6-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

This communication is responsive to Amendment, filed 10/31/2005.

Claims 6-8, and 16 are pending in this application. In the Amendment, claims 6 and 16 were amended.

***Election/Restrictions***

Newly amended claim 16 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 6-8 are drawn to video interface classified in class 715/719.
- II. Claim 16 is drawn to formatting information in separate file classified in 715/522.

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as an application deals specifically with image or video data, invention II has separate utility such as layout specifications are stored separately from the data to which such specifications are applied. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 16 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Window Explorer and Lipson et al. (U.S. Pat. No. 6,463,426).

Per claim 6, Window Explorer teaches a method of selecting desirable images for a user comprising:

(a) maintaining a list of a plurality of desirable user-selected image content that includes at least one of a digital image and a digital video (fig. 2; image list 20);  
(b) determining potential additional image content for said user based upon said list that includes at least one of an additional digital image and an additional digital video (figs. 3 and 4);  
(c) indicating to said user the potential desirability of adding said at least one of said additional digital image and said additional digital video without requiring interruption of the user's work flow with a decision operation to be made by said user before continuing said work flow (figs. 2 and 5; indicator 22).

Window Explorer does not teach determining potential desirable additional image content for said user based upon said list, free from said additional image content being selected by said

user, that includes at least one of an additional digital image and an additional digital video. However, Lipson teaches determining potential desirable additional image content for said user based upon said list, free from said additional image content being selected by said user, that includes at least one of an additional digital image and an additional digital video (col. 2, lines 37-56; col. 7, lines 37-45; col. 25, lines 45-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the teaching of Lipson in the invention of Window Explorer because it provides users with a search and retrieval system which is capable of automatically learning which factors are most important in searching for a particular image or for a particular type of image.

Per claim 7, Window Explorer teaches the method of claim 6 wherein said indicating includes a visual indication (figs. 2 and 5; indicator 22).

Per claims 8, the modified Window explorer teaches the method of claim 6, but does not teach said indicating includes an audible indication. Official Notice is taken that the use of audible sound indicator is well known in the art. It would have been obvious to an artisan at the time of the invention to combine such a feature with Window Explorer in order to inform users quickly and conveniently without the need for the user to read the text indicator.

### ***Response to Arguments***

Applicant's arguments with respect to the Amendment have been considered but are moot in view of the new ground(s) of rejection.

***Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh T. Vu whose telephone number is (571) 272-4073. The examiner can normally be reached on Mon-Thur and every other Fri 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine L. Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

T. Vu

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